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IN THE

Supreme Court of the United States

October Term, 1954.
No. 462

HALLDORA KRISTIN SIGURDSON,

Petitioner,

vs.

H. R. LANDON, ALBERT DEL GUERCIO and HENRY GRATTAN,

Respondents.

PETITION FOR WRIT OF CERTIORARI

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Respondents.

PETITION FOR WRIT OF CERTIORARI.

Your petitioner, Halldora Kristin Sigurdson, respectfully prays for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit in order to review its judgment affirming a judgment of the United States District Court dismissing her Petition for a Writ of Habeas Corpus to release petitioner from the custody of respondents.

Jurisdiction.

The decision of the Court of Appeals is unreported. A copy of same is contained in "Appendix A" attached to this Petition. A copy of the decisions of the administrative hearing officer, Board of Immigration Appeals are

contained in "Appendix B" attached to this Petition, as are the two decisions of the Board of Immigration Appeals on her Motion for Reconsideration of their original decision.

Jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Judgment of the Court of Appeals was entered on September 7, 1954; Petition for Rehearing was denied on October 27, 1954.

Questions Presented.

(1) The questions regarding the hearing reach at the heart of administrative justice operating under a statutory delegation of power over the very destiny of aliens. They are whether in arriving at factual conclusions of membership in the communist party, the administrative agency based it upon evidence in the record of the deportation hearing under the standards which have been decreed appropriate and appropriately applied and whether from a reading of the procedures here used to arrive at the result, a record is presented which meets the standards of procedural due process as promulgated under the cherished tradition of this Court and embodied in the basic concept of fair play?

(2) Whether the District Court acted arbitrarily in ordering the discharge of the order to show cause and the denial of the petition for habeas corpus without having read the transcript of the administrative hearing and admitting same upon the record the following day?

Statutes and Regulations Involved.

The statutory provisions involved are Sections 1 and 4 of the Act of October 16, 1918, as amended 8 U. S. C. 137; Section 19(a) of the Act of February 5, 1917, as amended 8 U. S. C. 155; Act of June 25, 1948, as amended, 28 U. S. C. 2241; 28 U. S. C. 2242; 22 U. S. C. 2243; 22 U. S. C. 2246; 28 U. S. C. 2248 and 28 U. S. C. 2253; and, the applicable rules and regulations in 8 Code of Federal Regulations in force and effect at time of petitioner's deportation hearing. The foregoing are all set forth in "Appendix C," *infra*.

Statement of the Case.

The nature of the facts in this Petition are such as to require considerable detail. For that reason, the following introductory summarization is respectfully presented.

Petitioner wrote Los Angeles office of the Immigation and Naturalization Service for information as to when she might be eligible for citizenship. The reply was a letter asking her to appear at the office at a designated time. She appeared alone and was taken to a small room in the office and interrogated for almost four hours by two investigators who employed a Dictaphone recording machine. Later, an alleged transcript of the interrogation was presented for her signature. The transcript was proven incorrect by comparing a very small portion of it with the Dictaphone belt; thereafter, a second transcript was presented for signature and it, too, was incorrect and on the second occasion, one of the investigators made interlinear corrections from memory and without consulting Dictaphone belts and attempted to claim that

it was a "3rd corrected transcript." Petitioner refused to sign any of the alleged transcripts which contained admissions in a proscribed organization on the grounds that the same were incomplete, incorrect and irregularly taken and that the alleged admission was involuntary in that she was coerced into signing it by the conduct of the investigator in closing both windows in the room despite temperature that day at 91° and smoking continuously and by "3rd degree" methods in compelling petitioner to answer as they wished and that they would only record when she answered as they demanded.

* * * *

Warrant for deportation was issued and deportation hearing held. Petitioner objected to use of alleged statement on the grounds heretofore set forth and on *voir dire* examination of the two investigators, it was proven that that they did not record all that was said about memberships and organizations, subject under query; that the transcript did not reveal when "off the record" discussion was had; that the machine was under the control of the investigators who stopped in many, many times; that each of the investigators testified that only what they wanted was recorded and that much was said by her and them which was not recorded; that the investigators testified that when the Dictaphone belts would be played back, a "click" would be audible for each stopping of the machine and the Hearing Officer took "Judicial Notice" twice of this fact. When the belts were played back, but one "click" was heard, despite the necessity for many if the belts were originnals and not spurious. Hearing Officer was handed eight (8) belts as the belts of the examination, yet the alleged statement required by five (5) to play it back, and only certified five (5) belts. When he made no effort to investigate the apparent dis-

crepancy, petitioner's counsel asked for permission to have the eight (8) belts examined by Dictaphone Corporation experts to determine if they were actually the originals. Permission denied. The statements made during the hearing by the Hearing and Examining Officers that there was but one "click" is missing from the record, but there is contained in the transcript of the agency hearing evidence that they so stated.

The alleged statement was admitted over objection and evidence that it was different from the original statements shown petitioner and *voir dire* proof of coercion in obtaining admission. Besides, proof showed that eight (8) Dictaphone belts were used to record statement, yet only five (5) belts required to make playback of statement admitted. Moreover, proof of lack of multiplicity of "clicks" audible and "judicial knowledge" twice expressed is incontrovertible.

One of the "expert" witnesses for the agency who testified on the proscribed organization was proven a perjurer by petitioner in that he falsified his former Communist Party membership on California Loyalty Oath which he was required to sign to retain his job as high school teacher. The other "expert" witness on the proscribed organization corroborated petitioner as to certain organization, but testified that she was a member of a nefarious group. He was impeached on many grounds. The two witnesses that testified against petitioner contradicted each other on important matters. Hearing Officer's decision defended and attempted to excuse the perjury, *supra*, in a most lamentable and disgraceful manner. Petitioner ordered deported and she filed Petition for Habeas Corpus. District Judge ordered her Petition for Habeas Corpus dismissed and next day on argument

for Motion for Rehearing, said District Judge admitted on the record that he had not read the record and this also appears in the minutes of the court. Statements of facts regarding proof adduced at the agency hearing regarding belts, etc., appearing in the decision of the Court of Appeals are unsupported by the record as is the position of petitioner regarding proof of perjury, her position being that agency defense of perjury was additional evidence of unfair hearing and did not go to right of agency to believe the perjurer despite proof of same.

* * * *

Petitioner, an unmarried female, native and national of Canada, was lawfully admitted to the United States for permanent residence on January 6, 1946 [Ex. 3 of "Ex. B"],[1] having first come to this country in 1944, and has been a continuous resident since, save for brief trips to Canada at Christmas and a two week vacation trip to Mexico in 1949 [Tr. 11, 13-14]. Said last reentry being basis of deportation warrant that she was an alien who prior to entry had been a member of the Communist Party of the United States pursuant to provisions of the Internal Security Act of 1950 (64 Stat. 987, 1006, *infra*).

Petitioner was a student at the University of Southern California from 1944 to 1950 and a teacher, later supervisor, of deaf children in the Compton (Calif.) City

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[1]Petitioner was granted permission to appeal on a typewritten record by the Court of Appeals for the Ninth Circuit and the original exhibits attached to respondents "Return and Answer to Petition for Habeas Corpus" [R. 19-22] have been forwarded to this Court for use in connection with this Petition for Writ of Certiorari. Particular designation is made to "Exhibit B" which is the certified file of the Immigration and Naturalization Service proceedings. When reference is made to [Tr. ....], it refers to the transcript of the hearing conducted by the said agency and said transcript is part of "Exhibit B". Exhibits referred to by number have reference to that numbered exhibit which is part of "Exhibit B".

Schools from 1948 [Tr. 10-11] until she lost credentials in 1953 because of lack of citizenship.

On November 2, 1950, without notice or counsel, a statement recorded on a Dictaphone recording machine, belt type, was taken at Los Angeles office of the Immigration and Naturalization Service by two of its investigators, Mr. Philip Habell and Mr. O. K. Chandler [Ex. 7].[3] Despite temperature of 91° [Ex. 6], investigator Habell closed both windows and locked door and both investigators smoked continuously. The interrogation lasted from 1 P. M. to approximately 5 P. M. and the machine was controlled exclusively by the investigators who both testified that they shut it on and off a very large number of times [Tr. 106-127].

From 1 P. M. to approximately 4:15 P. M., or possibly a little later, petitioner denied vigorously that she had been a member of the John Reed Club, the communist cell at the university. She even denied knowledge of same [Ex. 7 at p. 17]. However, at 4:15 P. M., or thereabouts, investigator Chandler "took over" the questioning and the admission followed shortly thereafter [Ex. 7 at p. 33]. At the hearing Chandler declined to affirm or deny that he was "very forceful and very emphatic" in his manner and conduct [Tr. 127], as was testified to by the petitioner about both of them, particularly Chandler [Tr. 134-136]. Habell testified that she had a "blank look" when the concluded [Tr. 78]. She testified that she was made ill by the ordeal [Tr. 136].

On November 8, 1950, petitioner, now with counsel, was presented an alleged transcript of the examination

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[3]See footnote 1, *supra*.

for her signature with the demand that she subscribe same without any interlineation corrections of any character [Tr. 92]. A very short comparison of the alleged transcript with the recording proved that said transcript was incorrect. Investigator Habell who played the recording denied this [Tr. 52], but Chandler said it was true [Tr. 94].

November 14, 1950, a "corrected transcript" was presented for signature under the above terms. It too was found to be incorrect [Tr. 59] and when proven so, Habell took the so-called corrected transcript and made interlinear corrections without referring to Dictaphone record and proclaimed it a "3rd corrected transcript" [Tr. 60].

On November 20, 1950, your petitioner filed with the agency her affidavit denying that she was then, or ever, a communist, and averred that she refused to sign any of the alleged transcripts presented because they, and each of them, were incomplete, incorrect and irregular and that the statement, or any admission therein, was not free or voluntary and that the admission was because of the coercive and 3rd degree methods employed by the investigators [Tr. 138]. This November 20, 1950 statement was made part of hearing record by petitioner [Tr. 3-4, 61], but was neither certified by Hearing Officer to file or to the District Court despite the Order to Show Cause [R. 16] and the Order of June 30, 1953 [Rep. Tr. June 30, at p. 22; R. 33].

On October 10, 1951, a warrant of deportation was issued against petitioner pursuant to provisions of the Internal Security Act of 1950 (Ch. 1024, 81st Cong. 2nd Sess., 64 Stat. 987, 1004, *infra*).

Administrative hearing upon the warrant commenced on October 24, 1951, and continued from time to time and concluded on February 20, 1952.

When the alleged statement was presented at the hearing, petitioner objected on the grounds that it was incorrect, incomplete, irregularly taken and not free and voluntary and asked for and received *voir dire* examination of investigators to prove same [Tr. 21, 22, 23].

Each of the investigators testified that it was a warm day, *supra,* and that they smoked [Tr. 40]; Habell stated he closed all windows [Tr. 40, 41], as did petitioner; Chandler said one window remained open [Tr. 102]; each of the investigators testified that she denied communist party membership until Chandler "took over," his guess of the time where he "took over" being approximately 4:15 P. M., and he said he took over because he was "concerned" of not getting finished at quitting time [Tr. 126-127]; each investigator testified that he was familiar with the operation of Dictaphone machines and that a "click" would be audible on a playback of the recording to indicate when the machine was stopped and started [Tr. 69, 120] and that each of them stopped the machine many, many times during the interrogation [Tr. 63, 71, 105]; Hearing Officer expressed "judicial knowledge" twice [Tr. 69, 120], that the recording would make an audible "click" to indicate stop and go, even demonstrating on the Dictaphone machine in the hearing room the type of sound audible [Tr. 69].

Habell denied using forceful language, but his co-investigator Chandler admitted that Habell did; Chandler refused to affirm or deny that he was "very forceful and very emphatic" in his questioning of petitioner [Tr. 126-

127]; petitioner testified that they both used such language [Tr. 134, 136]; Habell admitted that not all of his questions on clubs and memberships appeared in the transcript presented [Tr. 43-76], and that was the very subject under investigation; Habell denied demanding petitioner subscribe the two previous transcripts presented her on November 8-14, 1950 without making correction by interlineation of errors [Tr. 54], while Chandler said he did [Tr. 92]; Habell denied that the playback of the very small portion of the recording on November 8, 1950 showed error [Tr. 52], while Chandler said it did [Tr. 94]; Chandler testified that he couldn't say whether the transcript presented, later admitted [Ex. 7], was the same as the previous transcripts shown petitioner, *supra*.

Petitioner testified that the transcript presented and admitted at the hearing was not the same as those previously shown her [Tr. 139]; that the machine was stopped dozens of times [Tr. 158] and was stopped whenever she would not answer as they had instructed her when "off the record" [Tr. 138]; that she had never heard of the John Reed Club until told about it at the November 2, 1950 examination [Tr. 225]; that she was never a member of the John Reed Club and that she made the admissions [Ex. 7, p. 33], because ordered and instructed to so do by Chandler and that said admission or admissions were not of her own free will [Tr. 137-138]; denied that she was ever a communist or a member of the Communist Party of the United States [Tr. 227]; that the actions and voices of the two investigators were different "off the record" than when "on" [Tr. 137]; that their conduct and attitude was belligerent and frightening [Tr. 135]; that she "wondered" if they were going to use physical force [Tr. 142]; that the ordeal made her ill

[Tr. 136]; and, that they seemed "off the record" as much or more than "on" [Tr. 136].

When the Hearing Officer asked for the examination Dictaphone belts, the Examining Officer removed them from the file and counted on the record eight (8) belts [Tr. 107], later handing them to Hearing Officer for playback. The playback of the belts to correspond with the transcript admitted [Ex. 7] required but five (5) belts and took but two (2) hours and twenty (20) minutes [Tr. 145-146]. Neither the Hearing Officer or the Examining Officer made inquiry why but five (5) belts were required for a playback, when the Government produced eight (8) belts. The transcript [Ex. 7] corresponded substantially with the five (5) belts played insofar as wordage is concerned.

There was but one (1) "click" audible on the playback of the belts. Both the Hearing Officer and the Examining Officer so stated on the record, yet it is not contained in the transcript of the hearing [Exceptions to Hearing Officer's Decision, pp. 43-44, part of "Ex. B".][1]

Petitioner's testimony, as follows, was never challenged by either the Hearing Officer or the Examining Officer:

"Counsel to Respondent:

Q. Miss Sigurdson, you heard the playing of the transcript and according to the information told us by the Hearing Officer and the Examining Officer, it appeared that there was only one interruption or one stopping of the instrument. That was on page 17 for your recollection. Is that a true and exact recollection to you as to how many times the machine was stopped? A. Absolutely not." [Tr. 158.]

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[1]See footnote 1, *supra*.

Petitioner asked for and was denied permission to have belts examined by Dictaphone Corporation experts [Tr. 235], and this was after Government did nothing about it and Hearing Officer failed to take action.

Government rested its case against petitioner upon introduction of the statement [Ex. 7] and the testimony of John W. Kerr, a high school teacher. Petitioner subsequently proved Kerr a perjurer [Ex. 9] by documentary evidence. Decision of Hearing Officer defends and excuses perjury in lamentable language, *infra* (Appendix B).

Government re-opened its case after proof of Kerr's perjury and produced Tony Harry Adrean. He testified that he couldn't remember petitioner until shown pictures and told about her by immigration investigators [Tr. 247]. Further testified that his conversations with investigators were recorded [Tr. 247]. Petitioner was denied right to hear and inspect the recording of the conversations to determine if the investigators had told him what to say [Tr. 247-248]. Adrean further testified that he was a member of a club at the university which was identical with club described by your petitioner to investigators on November 2, 1950, prior to her mental collapse, as aforesaid, and that this club was not a communist club [Tr. 251].

Each of the two witnesses testified that petitioner had been a member of the John Reed Club at the university and that it was a cell of the Communist Party of the United States. There never was any charge of present membership in the Communist Party by the Government and the only charge related to period in 1946-1947 of approximately one year or less while she was a student at college.

The Assistant Commissioner of Immigration certified the case to the Board of Immigrations Appeals and it dismissed her appeal on March 19, 1953, *infra* (Appendix B); Motion for Reconsideration was filed and the Board of Immigration Appeals filed two decisions thereafter, *infra* (Appendix B), both denying motion. Order for deportation issued March 30, 1953 [R. 23].

Petition for Habeas Corpus filed June 24, 1953 [R. 2] and Order to Show Cause [R. 16] returnable June 30, 1953. On June 30th, the case had to be continued because Government failed to file with the court a complete record [R. 33, 34; Rep. Tr. June 30, 1953, p. 22, lines 4-7]. Continued to July 13, 1953 [R. 34].

On July 13, 1953, District Court ordered Petition for Habeas Corpus dismissed and Order to Show Cause discharged [R. 49, 50].

On July 14, 1953, petitioner filed Notice of Motion for Rehearing, etc. [R. 65] and on said day District Court admitted on the record that it had not read transcript of the administrative hearing [Rep. Tr. July 14, 1953, p. 63, line 6] and the minutes of the court show the following:

". . . Court states it will read the record in this cause. . . ." [R. 75, lines 18-19.]

On July 15, 1953, which the calendar shows to be a Wednesday, the District Court denied Motion for Rehearing [R. 82].

Original jurisdiction of the District Court was invoked under the Act of June 25, 1948, 28 U. S. C. 2243, *infra* (Appendix C).

Reasons Why Certiorari Should Be Granted.

This is not merely a petition by Halldora Kristin Sigurdson, alien, but a petition to this Court by the millions of aliens lawfully resident in this country pleading to know whether their very destiny can be at the whim and caprice of ambitious and zealous, but questionable minor Government agents, seeking to make a record for themselves regardless of the liberty and rights of aliens guaranteed by the Constitution of the United States and the Rules and Regulations of the Immigration Service; these millions of aliens represented by this petitioner in her Petition want to know whether unquestioned proof of spurious Dictaphone belts used to make a statement containing an admission shall constitute "substantial" evidence and whether the administrative hearing officer can be considered fair and impartial when, in his decision, he attempts to excuse the proven beyond doubt perjury of an "expert" witness on communism by arguing that said witness might not have known the purpose and aim of the Communist Party, despite the knowledge and proof that said "expert" witness was a college graduate and at the time of the perjury, a high school teacher; yes, these millions of aliens represented by this petitioner want to know whether it is the law of the land that a District Court can arbitrarily dismiss a petition for Habeas Corpus and discharge an Order to Show Cause without reading the record, and, particularly after the matter came before said District Judge after a continuance ordered because the respondents (immigration officials) failed to file a complete record or comply with the Order to Show Cause.

This Court in *Eagles v. Samuels*, 329 U. S. 304, 311, has repeated that mere error in the administrative hearing

is insufficient for issuance of habeas corpus. It must be shown that there was a deprivation of basic and fundamental procedural safeguards which were of such magnitude to render the hearing unfair. The crucial test is the impact of the procedural irregularities upon the petitioner.

The law declares that this alien can only be deported after a fair hearing. The question, therefore, resolves itself into whether she had a fair hearing as required by Constitution and the agency regulations set forth in "Appendix C," hereof.

We will prove that the decision of the Court of Appeals, "Appendix A," constituted a miscarriage of justice and that the hearing was unfair when, or rather if, this Court grants certiorari.

We urge this Court to allow us to prove that the entire proceedings before the administrative agency were voided and invalidated and constitute a denial of due process when:

1. Hearing Officer, with knowledge or sufficient evidence in the record for him to have reason to know, that the Dictaphone belts from which a statement [Ex. 7] was prepared are spurious, admits said statement into evidence, particularly after said Dictaphone belts failed to meet the test of originality testified to by the two investigators that recorded same [Tr. 69] and his own "judicial knowledge twice expressed [Tr. 69, 120], all in violation of 8 C. F. R. 152.2(a)7, 152.2(b), 152.2(f);
2. Hearing Officer admitted statement [Ex. 7] despite knowledge that only five (5) belts were required to repay same and he had been handed eight (8) belts by the Examining Officer as the belts used to record

the statement, all in violation of 8 C. F. R. 151.2 (a)7, 151.2(b), and 151.2(f);

3. Hearing Officer made no investigation to determine the reason for the discrepancy in the number of belts given and used, all in violation of 8 C. F. R. 151.2(a)7, 151.2(f), and 151.3(a)(b);
4. Hearing Officer denied alien, your petitioner, right to have belts examined to determine their originality, a matter he should have done, all in violation of 8 C. F. R. 151.2(a)7, 151.2(f);
5. Hearing Officer certified but five (5) belts, all in violation of 8 C. F. R. 151.3(a), 151.7;
6. Hearing Officer admitted statement which investigator testified was incomplete; all in violation of 8 C. F. R. 151.3(b);
7. Hearing Officer admitted statement after proof of duress and coercion, all in violation of 8 C. F. R. 151.2(b), 151.2(f), 151.3(b), and,
8. Hearing Officer distorts facts and ignores evidence in defense of and excuse for perjury of so-called "expert" witness in his decision, *infra*, and attempted to shield said witness whose story and testimony appeared to be fabricated and devoid of truth, honor and trustworthiness, all in violation of 8 C. F. R. 151.5(a).

U. S. Const., Amend. V;
Eagles v. Samuels, supra;
Bilokumsky v. Tod, 263 U. S. 149;
Fat v. White, 253 U. S. 454;
Tisi v. Tod, 264 U. S. 131;
Bridges v. Wixon, 326 U. S. 135;
Johnson v. Zerbst, 304 U. S. 458;
Vatjauer v. Commissioner, 273 U. S. 103.

In the enforcement of the deportation law, it is mandatory that the Government respect the procedural safeguards of due process.

The Japanese Immigration Case, 199 U. S. 86, 101;
Wong Sung v. McGrath, 339 U. S. 49.

The millions of aliens represented by this petitioner want to know whether or no investigators of the immigration service can take them to a small room, close all windows, *supra,* lock the door [Tr. 40-41], smoke continuously and take their statement under such conditions, not forgetting in the instant case the temperature was 91°, and, in so doing use forceful, hostile and belligerent behavior and language [Tr. 135] to such a degree that they force an admission and, as investigator Habell testified in this matter, a "blank look" [Tr. 78] upon the face of the victim, and, as happened in this matter, victim became ill [Tr. 136] as a result of the treatment.

The practice and procedure of the administrative hearing, if allowed to stand unmolested would permit of outright manufacture of evidence without effective opportunity for challenge unless this Court takes jurisdiction. Rejected evidence of the absolute and complete spuriousness of the Dictaphone belts cannot be explained on any ground consistent with a genuine desire to afford your petitioner the fair consideration required by due process. Evidence upon which the reasonable mind can justify action is required, not any arbitrary administrative decree or fiat. Uncontradicted evidence of duress and coercion demand a fair and dispassionate examination of the complete circumstances and a ruling based upon all of the evidence if we are to satisfy the due process clause of the Fifth Amendment of our Constitution.

Assuming for the brevity of this Petition, but very definitely not conceding, that the testimony of the two so-called "expert" witnesses produced "some" evidence, we submit that since there was a violation of due process, the decision of the Court of Appeals is contrary to the ruling of this Court.

Eagles v. Samuels, 329 U. S. 304, 311;
Vatjauer v. Commissioner, 273 U. S. 103;
Bridges v. Wixon, 326 U. S. 135, 156.

When, rather if, certiorari is granted, petitioner will prove that there was no substantial evidence in the record. However, for additional evidence of denial of fair hearing, see Hearing Officer's decision [Ex. B] wherein he shamefully attempts to defend and excuse the perjury [Ex. 9] of witness Kerr, *infra*.

The statements in the decision of the Court of Appeals, *infra*, about the following are unsupported by the record:

1. That because counsel for petitioner conceded that the belts replayed at the hearing corresponded with the transcript presented, his contention of spurious belts was open to question;
2. That if the belts were not spurious, a "click" would have been heard many times and footnote 5 states "Before the hearing officer there was no proof to this effect, and no proper offer of such proof . . .";
3. That petitioner contended that the hearing officer was obliged to disregard all of the testimony of perjurer Kerr simply because of the proof of the perjury;
4. That is was not required to determine whether hearing officer acted properly in his excuse of the perjury in his decision; and,

5. That the District Court did not act arbitrarily in ruling in the manner it did.

The Court of Appeals ruling that the District Court did not act arbitrarily in dismissing petitioners Petition for Writ of Habeas Corpus without having read the record constitutes a gross miscarriage of justice.

Unless the District Court read the record, how could it determine whether the findings of the administrative agency were based upon "substantial" evidence as required by law?

It is submitted that it is difficult to consider that the District Court acted other than arbitrary in ordering the dismissal of the petition without reading the record, because it is impossible to make conclusions based upon findings when it has not read the record.

It was the duty of the District Court to ". . . summarliy hear and determine the facts, and dispose of the matter as law and justice require." (28 U. S. C. 2243, *infra*).

The chronology shows:

1. Order to Show Cause set for June 30, 1953 [R. 16];
2. Hearing on Order to Show Cause and Petition for Habeas Corpus called on June 30, 1953 [R. 33] and continued to July 13, 1953 [R. 34] because the Government had failed to file a complete record [Rep. Tr. June 30, 1953, p. 22, lines 4-7];
3. Order for Dismissal of Petition for Habeas Corpus made July 13, 1953 [R. 50]; motion for bail on appeal continued until July 14, 1953 [R. 50];

4. Petitioner files on July 14, 1950 her Motion for rehearing of decision of July 13, 1953, and Court states it will read the record in this cause [R. 75] and District Court admitted it had not read the record [Rep. Tr. July 14, 1953, p. 63, line 6];
5. Court denied motion for rehearing [R. 82]. The date Wednesday, July 15, 1953.

If the decision of the court below is permitted to stand, serious doubt will have been cast in the minds of the millions of aliens whom your petitioner represents about the validity of the justice afforded aliens, and, particularly is this doubt of profound consequence in this period of international unrest and highly emotional domestic condition.

This case offers an appropriate means for a determination of the important questions posed which can affect the destiny of millions of aliens lawfully resident in the United States.

Conclusion.

The writ of certiorari should be granted and the order for deportation be set aside.

Respectfully submitted,

HARRY WOLPIN,

Counsel for Petitioner.

JOHN B. TOBIN,

Of Counsel.

APPENDIX "A."

United States Circuit Court of Appeals for the Ninth Circuit.

Excerpts from Proceedings of Tuesday, September 7, 1954.

Before: DENMAN, Chief Judge, HEALY and POPE, Circuit Judges.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

Opinion of the Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the Ninth Circuit.

Halldora Kristin Siguardson, Appellant, vs. H. R. Landon, Albert DelGuercio and Henry Grattan, Appellees. No. 13,974, Sept. 7, 1954.

Appeal from the United States District Court for the Southern District of California, Central Division.

Before DENMAN, Chief Judge, HEALY and POPE, Circuit Judges:

POPE, Circuit Judge.

The appellant, a native and national of Canada, first came to the United States in 1944. In July, 1949, she took a vacation in Mexico. On October 10, 1951, a warrant was issued for the arrest of the appellant for deportation, it being charged that prior to her reentry, following the vacation in Mexico, she had been a member of or affiliated with the Communist Party of the United States, and hence that she was subject to deportation pursuant to the provisions of the Internal Security Act of 1950 (Ch. 1024, 81st Cong. 2nd Session, 64 Stat. 987, 1006).[1]

Administrative hearings upon the warrant were commenced October 24, 1951 and continued from time to time

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[1]Sec. 22 of that Act lists as persons to be excluded from admission to the United States aliens "who are members of or affiliated with (i) the Communist Party of the United States. . . ." The section also provides: "Any alien who was at the time of entering the United States, or has been at any time thereafter . . . a member of any one of the classes of aliens enumerated [in the section above quoted] shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917."

thereafter and concluded on February 20, 1952. At such hearings the appellant was present and represented by counsel. The hearing officer made findings and a decision that appellant was a voluntary member of the Communist Party of the United States for a period of time during the years 1946-1947, and concluded that she was subject to deportation and recommended that she be ordered deported. His findings and decision were approved and adopted by the appropriate officer of the Immigration and Naturalization Service and appellant's appeal therefrom was dismissed by the Board of Immigration Appeals on March 19, 1953, and a final warrant or order of deportation issued March 30, 1953.[2] Appellant filed her petition for a writ of habeas corpus in the court below and this appeal is from the judgment of that court dismissing that petition upon the merits.

Upon this appeal petitioner challenges the sufficiency of the evidence to sustain deportation under the Internal Security Act of 1950, attacks the validity of the Act as applied to her, and asserts that for sundry reasons the administrative proceedings were so lacking in fairness as to be wanting in due process of law.

The evidence upon which the administrative finding of membership in the Communist Party of the United States was based consisted of (a) certain admissions upon the part of the appellant, and (b) the testimony of two witnesses who testified before the hearing officer. The admissions which were offered in evidence were statements

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[2]Upon that date the Immigration and Nationality Act of June 27, 1952, (66 Stat. 166), had been enacted but section 405 of that Act contained a savings clause providing that deportation proceedings then pending should not be affected by the enactment of the Act of June 27, 1952. See note to 8 U. S. C. A. 1101.

alleged to have been made by the appellant to certain investigating officers in the month of November, 1950, and prior to the issuance of the warrant for her arrest. The written transcript of the statement discloses that the appellant then stated that she was a member of the Communist Party of the United States for a period of approximately one year during which she was associated with the John Reed Club of the University of Southern California; that she was aware that this Club was a Communist Party group, and that this occurred in 1946 and 1947.[3]

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[3]During the early portion of this examination appellant appears to have been somewhat evasive. For example in telling of her membership in a group later identified as the John Reed Club, she called it a "study club". The interrogation proceeded: "Q. Are you aware of the existence of an organization known as the 'John Reed Club'? A. No, not as such. Q. Did you ever hear of the organization of the John Reed Club? A. I don't really know whether I do recall if there's a John Reed Club or a club called the John Reed Club, no. Q. Is the name totally foreign to you? A. No, it isn't. Q. Did you become aware of the existence of a John Reed Club while you were a student at USC? A. I might have, yes. Q. Was the study club that you referred to in which you state you held membership known as the John Reed Club? A. I don't recall it being or not being the John Reed Club. Q. Are you willing to state now that your study club was called the John Reed Club or not? A. I'm certainly willing to state that it certainly could have been the John Reed Club. I don't remember as having a name during the time I was identified with the club." Finally, she answered as follows: "Q. Would you state then that you were a member of the Communist Party of the United States for a period of approximately one year? A. Yes, approximately one year or less. Q. Do you feel that your membership was exclusively during the period that you was associated with this study group which we have referred to as the John Reed Club? A. Yes, I do. * * * Q. When did you become aware that this group was in fact, a Communist Party group? A. Well . . . I think I . . . I think I was suspicious rather early. Q. When did your suspicions crystallize into knowledge? A. I don't . . . I can't state any particular date. I guess I would say some time before I ceased association."

Before the hearing officer the appellant challenged the admissibility of the offered proof of these admissions. She testified that she had been examined on that occasion in a hot room where the temperature was 91°, where the windows were closed and where the examining officers so filled the room with tobacco smoke that she was subject to extreme physical and mental discomfort; that during the recording of her examination there were many off-the-record interruptions when the officers said: "Oh, you know better," "don't try to tell us that," "oh you are being evasive," "you are engaging in mental fencing," and the like; so that anything she said on that occasion was under some sort of psychological coercion.* The statements made on that occasion were recorded upon a dictaphone and the offered transcript of what was said on that occasion was transscribed from the dictaphone

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*She testified: "Q. Miss Sigurdson, you stated that you were frightened by the officers who took the statement; did they threaten you with physical harm, bodily harm, if you did not make such a statement? A. No, they didn't Q. In what manner were you frightened? A. In what manner? Q. How were you frightened? A. You mean what in their manner frightened me? Q. You stated you were frightened; will you please explain? A. I was frightened by their entire manner in which they conducted themselves, the sound of their voices, the belligerency, the demanding, the commanding type of behavior that was expressed. Q. What did you fear? A. I wondered at what point they might use physical violence. Q. Did they threaten to incarcerate you or deport you from the United States if you did not make certain answers? A. No. I don't recall that they did that."

Asked if she had then answered in the affirmative the following question: "Are you now or have you ever been a member of the Communist Party of the United States?", she testified as follows: "Q. Did you say 'yes' to the question? A. That came out of my mouth, yes, it did; it was not voluntary or free or my own statement in that sense. Q. Were they forcing you at that time to say that, did they tell you to say yes? A. They did."

belts. Counsel for appellant asserted before the hearing officer that the offered transcript was incorrect and not a true record of what had been said. For the purpose of checking the accuracy of the transcript the dictaphone belts were produced and replayed before the hearing officer. These were identified as the records made during appellant's examination by the investigating officers.

Counsel for the appellant and counsel for the Government followed the offered transcript as the dictaphone record was replayed and when they were asked if the transcript was correct according to the recordings, appellant's counsel replied: "Substantially so. Substantially so with the recordings; there were certain minor corrections but we won't worry about that."

Appellant apparently contends that notwithstanding it was thus conceded that the dictaphone record and the offered transcript of her statement were substantially identical that the dictaphone record thus played in the presence of the hearing officer must have been a spurious one. Appellant testified that during the replaying of the record before the hearing officer, a process which required two hours and 20 minutes, there was but one audible "click" from the record. It was testified not only by the appellant but by the officers who took the statement, that the dictaphone machine was stopped on numerous occasions during the taking of the statement. It is asserted that had this been the actual dictaphone record of appellant's examination and not a substituted one, there

would have been a "click" audible for each time that the machine was thus stopped.[8]

It is sufficient to say that all of these claims of fabrication and substitution were made before the hearing officer who had an opportunity to compare the voice and manner of speech disclosed in the dictaphone records with the voice and manner of speech of the appellant, whom he had heard in person, and he rejected the assertion that the recordings were not those of appellant's examination on November 2.[9]

The Government produced two witnesses who testified before the hearing officer that they had been members of the John Reed Club and of the Communist Party at

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[8]Before the hearing officer there was no proof to this effect, and no proper offer of such proof. What happened was that appellant's counsel said: "I have been to the Dictaphone people and they appraised me . . . that the belts should absolutely reveal when the machine was shut off. . . . I want permission to take these belts to the Dictaphone people so I can get a report whether or not there has been any tampering with these belts or whether this is a playback in plain English." Appellant was the only witness who testified that on the playback but one "click" was audible. Before the court counsel said: "The Dictaphone representatives . . . would have testified the machine in vogue, and, which they sold to the Immigration Service in 1951 was such and such a type that didn't have that type of contrivance on it which would have a click".

[9]Five dictaphone belt recordings were replayed during this process of comparing them with the typewritten transcript. The record indicates that the investigating officers had three additional dictaphone belt recordings and these additional records were not examined by the hearing officer. Appellant asserts that this was further proof that there was some sort of fabrication. The record fails to disclose that the additional unused recordings were material or that they had any significance with relation to the question whether the appellant had in fact made the admissions charged to her.

the same time that appellant was a member. They testified that they had then been acquainted with her, attending meetings of this group with her, and that she could not have joined or have been a member of this Club without knowing that it was a unit of the Communist Party of the United States.

Appellant contended before the hearing officer and undertakes to argue here, that the testimony given by these witnesses was so unworthy of belief that it must be regarded as a complete nullity. One of the witnesses, a John Kerr, testified that in 1950, after he had ceased his Communist Party membership, he signed the "California Loyalty Oath."[1] Appellant says that because that oath contained a statement that "within the five years immediately preceding . . . I have not been a member of any party or organization" advocating the overthrow of the Government of the United States by force or violence, Kerr was shown to have been guilty of perjury in signing the oath. Therefore, says appellant, the hearing officer was obliged wholly to disregard all of Kerr's testimony.

Another of these witnesses, Tony Harry Adrean, testified that he had been a professional expert witness on Communism. Pointing to this portion of his testimony and to certain discrepancies between the testimony of Adrean and that of Kerr, particularly with respect to street addresses where the John Reed Club was said to have met, appellant argues that the testimony of Adrean

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[1]See Pockman v. Leonard, 39 Cal. 2d 676, 249 P. 2d 267, which sets out the oath required under the Act, (Deering's Government Code, Sec. 3100, 1951 Stats. p. 15).

likewise is no evidence at all and that the hearing officer was obliged to disregard it.

With respect to all these attacks upon the sufficiency of the evidence to sustain the administrative finding of Communist Party membership, it is enough to say that the hearing officer gave careful consideration to all of the questions thus raised by the appellant and found upon the evidence before him that the appellant had in fact on November 2, 1950, made the statements attributed to her; that those statements had not been obtained by duress or coercion, but had been made voluntarily; and that the record of such statements produced and identified by the officers who took them was correct and accurate. After listening to the playing back of the dictaphone recordings and of the sound of the voices there recorded, and the manner in which the questions and answers were propounded and given, he found that the admissions charged to the appellant were in fact made by her and were in all respects freely and voluntarily made.

With respect to the asserted perjury on the part of witness Kerr, the hearing officer thought that there was no proof that when Kerr signed the loyalty oath he knew or was aware that the Communist Party was an organization whose purpose was to overthrow the government of the United States by force or violence. But whether the hearing officer was or was not justified in this thought, or in thus excusing the signing of the oath, the question before him was whether Kerr was now, at the hearing, telling the truth, or was to be believed. The hearing officer saw and observed the two witnesses. It was for him, not for us or for the trial judge, to say whether their testimony, then given in his presence, should be credited.

It must be conceded, however, that if the trial judge were called upon to base findings upon the testimony of witnesses of the type here called, he might have declined to do so. And it may well be that hereafter when Congress comes to review the administration of this Act and the Department's practice of using professional, so-called expert witnesses on Communism, it may not be particularly proud of the results accomplished. What we here point out is that it is not within the functions or power of this court to do anything about such matters.

Appellant seems to concede that upon the hearing by the court it was no part of the court's function to review the evidence received by the hearing officer or considered in the administrative proceeding for the purpose of determining whether he agreed with the hearing officer as to which witnesses were to be believed or as to whether wrong inferences were drawn from the evidence.[8] Her briefs recognize the rule stated in Eagles v. Samuels, 329 U. S. 304, 311, to the effect that: "It is elementary that habeas corpus may not be used as a writ of error. Tisi v. Tod, 264 U. S. 131; Woolsey v. Best, 299 U. S. 1. The function of habeas corpus is exhausted when it is ascertained that the agency under whose order the petitioner is being held had jurisdiction to act. If the writ is to issue, mere error in the proceeding which resulted in the detention is not sufficient. Tisi v. Tod, *supra*.

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[8]At the hearing below the following occurred: "The Court: . . . 'As I understand these matters, this order to show cause for the writ of habeas corpus will involve a review by the court of this administrative file. It will not involve the taking of any other testimony. Do you agree with that? Mr. Tobin: Yes, your Honor'."

Deprivation of petitioner of basic and fundamental procedural safeguards, an assertion of power to act beyond the authority granted the agency, and action without evidence to support its order, are familiar examples of the showing which is necessary. See Johnson v. Zerbst, 304 U. S. 458; Bridges v. Wixon, 326 U. S. 135, 149. But it is not enough to show that the decision was wrong. Tisi v. Tod, *supra*, or that incompetent evidence was admitted and considered. Vajtauer v. Commissioner, 273 U. S. 103. If it cannot be said that there were procedural irregularities of such a nature or magnitude as to render the hearing unfair, Bridges v. Wixon, *supra*, p. 156, or that there was no evidence to support the order, Vajtauer v. Commissioner, *supra*, the inquiry is at at an end."[9]

Appellant's position appears to be that these rulings of the hearing officer with respect to the admissibility of offered evidence, and his findings with respect to the appellant's membership in the Communist Party were so outrageous as to constitute a denial of due process and a depriving of the appellant of basic and fundamental procedural safeguards.

With respect to that contention we can only say that we cannot agree. In our view the trial court could not have reached any different conclusion than that disclosed by the judgment against the appellant.

Appellant assigns some other errors most of which are so lacking in definiteness and specificity that it is difficult to understand what points she is attempting to

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[9]Tisi v. Tod, there cited, was also a deportation proceeding.

make.[10] Appellant says that: "The court denied appellant right to prove spuriousness of the questioned evidence . . . to-wit: the dictaphone belts from which Exhibit 7 of Exhibit B was made." If this is an assertion that there was error on the part of the court in rejecting certain evidence offered by the appellant, we think that no such point can be made here for several reasons: If the appellant had such proof the proper place to offer it was before the hearing officer. No such offer was made. (See footnote 5 *supra.*) Even if such an offer had been made and rejected, a wrong ruling in this respect would not require upsetting of the administrative decision under the rule stated in Eagles v. Samuels, *supra,* and in Tisi v. Tod, *supra.* Furthermore, there is here no compliance with subdivision (d) of our Rule 18.[11]

It is contended that the decision of the court below must be reversed for the reason that it ruled without a full or adequate reading of the record before it. In substance appellant asserts that the trial court acted so precipitately in denying appellant's petition that its decision was an arbitrary one.

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[10]For example: "That Findings V, VI and VII were made despite fact that record before court, particularly, Exhibit B, shows that hearing was in violation of multiplicity of sections of 8 Code of Federal Regulations and that Hearing Officer acted arbitrarily and contrary to established law, *infra.*" "That Finding No. VIII was made despite showing of direct violation of many sections of 8 Code of Federal Regulations, all of which are set forth in the Argument, *infra,* being too numerous to mention repeatedly."

[11]"(d) . . . When the error alleged is to the admission or rejection of evidence the specification shall quote the grounds urged at the trial for the objection and the full substance of the evidence admitted or rejected, and refer to the page number in the printed or typewritten transcript where the same may be found."

The record shows that the cause was set down for hearing on July 13, 1953. On that day all parties being present, counsel for appellant made a motion for the "immediate issuance of a writ of habeas corpus and the immediate order of discharge of petitioner." In support of this motion witnesses were called by appellant and examined. The appellant also made a motion for an order requiring an exhibit attached to the return to be added to or supplemented. These motions were denied after very extensive argument during which the state of the record before the Immigration Service was discussed at great length. Thereafter and on the same day, the court announced that the petition would be dismissed. The case was recessed until the day following, July 14, on which day the appellant made a motion "of hearing of decision denying our writ of habeas corpus." This was followed by a further extended argument between counsel with respect to the state of the record before the hearing officer and with respect to the merits of the petition. It was then stated by counsel for appellant that it was improbable that the court had read the transcript before it. The court then announced: "I will tell you what I am going to do. I will just read the record tomorrow. I will read the whole thing. I will read everything. I will rule on this about Friday." Upon Friday, the 15th of July, the argument as to the merits of the cause continued, and at the conclusion of that day's hearing the court directed that the record show "that after the proceedings had on July 13, 14 and 15, 1953, the court orders the order to show cause dismissed and the petition for habeas corpus denied."

The record sufficiently shows that the district court gave full and adequate consideration to the record before it,

It cannot be asserted here that the court acted arbitrarily in not spending enough time in considering the matters before it.

It is said by appellant that the respondents in the court below failed to certify in response to the order to show cause a complete record of all the proceedings before the Board of Immigration Appeals. It appears that after the appeal to the Board of Immigration Appeals was dismissed on March 19, 1953, the appellant on April 3, 1953 filed a motion for reconsideration of the Board's decision. Subsequently on May 27, 1953, she filed a supplemental motion for such reconsideration. On June 12, 1953, a written order denying such reconsideration was executed by the Board, and on June 26, 1953, a further order to the same effect was made by the Board. Both orders were attached to the original return, but on the application of the respondents and showing made by them that the June 12 order was only tentative and that the order of June 26 was the one intended by the Board finally to dispose of the motion for reconsideration, the court below made an order permitting the June 12 order to be filed as a separate exhibit but not as a part of the return. As both documents were but denials of the appeal, we are unable to see how this action of the court, whether right or wrong, could have been in any manner prejudicial to the appellant.

It is argued that the Act of September 27, 1950 (64 Stat. 1048), exempting immigration proceedings from the Administrative Procedure Act of 1946, is unconstitutional in that it is a violation of "due process and equal protection" clauses of the Constitution. We regard this assignment as so patently frivolous as to require no discussion here.

Finally, it is contended that Section 22 of the Internal Security Act of 1950 is "unconstitutional in that it is in violation of the Fifth Amendment of the Constitution." That contention was ruled without merit in Galvan v. Press, 347 U. S. 522.

It is altogether possible that the appellant was in no sense a conscious collaborator in the communist conspiracy against which the Act is directed. Rather, she may have been one of those persons with sympathy toward the underprivileged and a desire to fight against oppression of minority groups who were deceived into believing that these communist groups were genuinely interested in the same altruistic objectives. She may have been herself their victim. In the language of the Galvan case, she may be "an alien who was duped into joining the Communist party." In Harisiades the court noted that the Act there considered was one which "bristles with severities"; and in Galvan, the feature of the Act here considered was said to be one that "strikes one with a sense of harsh incongruity." But Congress was not obliged to require the administrative officials, or the courts, to attempt the impossible task of determining whether an alien is an innocent dupe or a dissembling hypocrite. Congress drew no distinction, and we cannot. This was settled by Galvan v. Press.

The judgment is affirmed.

(Endorsed:) Opinion. Filed Sept. 7, 1954. Paul P. O'Brien, Clerk.

JUDGMENT.

United States Court of Appeals for the Ninth Circuit.

Halldora Kristin Sigurdson, Appellant, vs. H. R. Landon, Albert Del Guercio and Henry Grattan, Appellees. No. 13,974.

Appeal from the United States District Court for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

(Endorsed) Judgment. Filed and entered September 7, 1954. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Wednesday, October 27, 1954.

Before: DENMAN, Chief Judge, HEALY and POPE, Circuit Judges.

ORDER DENYING PETITION FOR REHEARING.

On consideration thereof, and by direction of the Court, It Is Ordered that the petition of Appellant, filed October 6, 1954, and within time allowed therefor by rule of court for a rehearing of above cause be, and hereby is denied.

APPENDIX "B."

Decision of Hearing Officer and Board of Immigration Appeals.

U. S. Department of Justice, Immigration and Naturalization Service, Los Angeles 13, California.

File: A7 759 254

In Re: Halldora Kristin Sigurdson.

In Deportation Proceedings.

In Behalf of Respondent: John P. Tobin, Atty at Law, 1122 Guaranty Building, Hollywood 28, California.

Charges:

Warrant: Act of 1918—an alien who prior to entry has been a member of the Communist Party of the United States.

Lodged: None.

Application: None.

Detention Status: Released under bond.

Discussion: This record relates to a 39-year old single female, a native and citizen of Canada, who last entered the United States in July 1949 at San Ysidro, California, at which time she was admitted as a returning United States resident upon the presentation of a resident alien's border crossing identification card which had been issued to her on the basis of an admission for permanent residence at Blaine, Washington, on December 29, 1946. This last entry could not be verified (exhibit 4). The respondent testified that at the time of her last entry to the United States it was her intention to resume her permanent residence in this country.

The respondent was first admitted to the United States as a visitor at Blaine, Washington, on March 26, 1944, and thereafter returned to Canada in December 1945. She was admitted at Seattle, Washington, on January 6, 1946, as an immigrant for permanent residence (exhibit 3). In December of 1946 she made a temporary visit to Canada, was there for Christmas, and was readmitted at Blaine, Washington, on December 29, 1946. Her next departure from the United States was on the occasion of a trip to Mexico for two weeks in July of 1949. Her last entry to the United States was on her return from this trip to Mexico.

The respondent testified that she was a student at the University of Southern California, from the summer of 1944 until her graduation in 1948. She has been employed for more than the past three years as a teacher and supervisor of an educational program for deaf mute children in the Compton, California, City Schools. She claims never to have been arrested and there is no record relating to her in the fingerprint record files of the Los Angeles County Sheriff's office (exhibit 8).

There was introduced in evidence as exhibit 5 over objection of counsel a transcript of testimony of a recorded sworn statement made by the respondent at Los Angeles, California, on May 16, 1951. It is noted that the respondent testified at that time that she had been a member of or affiliated with the Labor Progressive Party in Vancouver, B. C. from approximately 1942 to 1944, and the Vancouver Youth Council, a part of the Canadian Youth Council, from 1939 to 1941. Although it has been held that the Labor Progressive Party of Canada during the period from 1943 to 1945 was an organization proscribed

by the Act of October 16, 1918, as amended (Matter of M-, A7 243 168, B. I. A., 1949, Int. Dec. 107) there has been no evidence introduced in this record to prove or sustain such a conclusion and therefore, her admission of membership in that organization will not be considered by the Hearing Officer in arriving at a decision in this case. It has not been established that the Canadian Youth Council is an organization proscribed by the Act of October 16, 1918, as amended.

There was also made a part of the record over objection of counsel, as exhibit 7, a transcript of the testimony of a recorded sworn statement made by the respondent at Los Angeles, California, on November 2, 1950. It was alleged by counsel and the respondent that this statement had been obtained by intimidation under duress and coercion and was not a free and voluntary statement, was not a correct record, and that there were off-the-record discussions which were not recorded. Counsel for the respondent called the investigating officers who conducted the interrogation of the respondent and requested that the dictaphone recordings on which the testimony was recorded be played back to determine the accuracy of the transcript. On examniation by counsel both of the investigating officers admitted that there had been some off-record discussion but only for the purpose of clarifying certain matters or questions and that all of the pertinent facts were recorded. They denied that there had been any intimidation, duress or coercion of the respondent. Much of the testimony of record and extensive questioning of the officers concerns the efforts of counsel to establish that the transcript of the testimony in question was not a true record. In order to resolve this issue the dictaphone recordings of the testimony of the re-

spondent as made on November 2, 1950, were played back in the hearing in the presence of the Hearing Officer, the Examining Officer, the respondent and her counsel. It was found that the transcript, except for very minor errors, was a verbatim record of the recording and there was nothing heard in the tone of the voices to indicate that the officers questioned the respondent in a rough, rude, aggressive, or domineering manner, or that the respondent in any way answered other than voluntarily, of her own free will. On the contrary her voice seemed to be clear and calm in all her answers as recorded. It seems hardly credible that the respondent, who appeared to the Hearing Officer to be a well poised, intelligent person, would have answered the questions as she did unless she intended to be truthful. To hold that her answers were false and that she had been forced to answer in that manner cannot be sustained by the evidence of record.

It is found that the allegations have not been proven and are without foundation in fact. It is concluded that the answers of the respondent as reflected in the transcript were freely and voluntarily made, conceding at the same time that other matters were without doubt discussed off the record during the questioning which should not under the circumstances in itself render the transcript inadmissible. It must be assumed that she was telling the truth, in the absence of clear and convincing evidence to the contrary. The dictaphone recordings of the transcript were attached as a part of exhibit 7.

All of the voluminous testimony regarding mistakes and corrections in a transcript or transcripts shown to counsel and respondent prior to the hearing cannot change the fact that the transcript made a part of this hearing

as exhibit 7 was a true record of the dictaphone recording. Both transcripts of testimony introduced in evidence as exhibits 5 and 7 over objections were properly admissible in evidence under the provisions of 8 CFR 151.3(b).

In the respondent's testimony of November 2, 1950, she admitted that she had been solicited to join the Communist Party of the United States while she was attending the University of Southern California and that she had been a member of a study group on the campus of this university from some time in 1946 to some time in 1947, but denied at first having any knowledge that it was a Communist group or that it was known by the name of the John Reed Club. She later testified on November 2, 1950 that she was reasonably certain that this study group was known as the John Reed Club and that it was a Communist Party group. Much of her testimony in regard to her membership in the John Reed Club and the Communist Party of the United States was equivocal with phrases such as "I think"; "I probably have"; "It is quite conceivable"; "I think it is possible"; "It is certainly thought to be"; "I might have"; etc., but it is noted on page 33 of the transcript of her testimony that in answer to this direct question:

> "I now repeat my question. Are you now or have you ever been a member of the Communist Party of the United States?"

she answered: "Yes" and further stated that she had been a member for a period of approximately one year in 1946 and 1947 and had paid dues. She also admitted having been a member of the Youth Congress which she thought was a Communist front organization, some time in 1940 or 1941, but that she did not know that it was such an organization when she became a member.

It is significant that in the respondent's testimony of November 2, 1950, she named a Tony Adrean as one of the members of the study group of which she had been a member, which was after identified as the John Reed Club, and a Tony Harry Adrean was subsequently called as a witness for the government.

The witness Adrean testified that he had been a student at the University of Southern California from November 1945 until the end of the summer in 1949; that he had been a member of the Communist Party of the United States in 1941 and 1942 but dropped out during his service in the army; that he renewed his association with the Communist Party again in November 1945, after leaving the armed forces, and was in the party until the late spring or early summer of 1947; that during that time he was a club organizer and an educational director and held other minor offices in the party; that he was a member of a unit of the Communist Party on the University of Southern California campus, known as the John Reed Club, from the beginning of 1946 until he left the Communist Party he believed in June of 1947; that he was one of the organizers of the John Reed Club and attended a number of meetings on Hoover Street in Los Angeles, California, of the John Reed Club during that time which were restricted to members of that club or members of the Communist Party of the United States from other sections.

This witness identified the respondent as a member of the John Reed Club which was a part of the Communist Party of the United States and testified that she attended meetings of this club a member of times when he was present during the period of his membership.

Counsel for the respondent attempted to impeach this witness by showing that he had made prior inconsistent statements, but it is not believed that the inconsistent statements alleged, if they were in fact made, were of such materiality as to affect his credibility.

The respondent denied ever having attended a meeting of the John Reed Club as testified to by this witness, while she was a student at the University of Southern California, or that she had ever been a member of that club.

A witness for the government John William Kerr testified that he had been a student at the University of Southern California continuously for approximately three and one-half years from November 1945; that he had been a member of the Communist Party of the United States from April 1947 until he dropped out in October 1947, during which time he was a member of a unit or section of the Communist Party of the United States known as the John Reed Club on the University campus and that he had attended about three meetings in a private residence on Hoover Street near the campus. He identified the respondent as having been a member of his Spanish class at the university and testified that he saw her at one Communist Party meeting of the John Reed Club on Hoover Street in the summer of 1947, which to the best of his knowledge was a closed meeting restricted to Communist Party members. He further testified that she was the person who gave him his Communist Party membership card.

This witness admitted signing a loyalty oath and a certified copy thereof was offered by counsel for the respondent and introduced in evidence as exhibit 9, for

the purpose as stated by counsel, of impeachment to show that the witness had committed perjury. This loyalty oath was subscribed and sworn to by the witness on October 25, 1950, and recites in part:

> ". . . that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the government of the United States or of the State of California by force or violence or other unlawful means except as follows:"

No exceptions were stated. This document did not name the Communist Party as such and there was no evidence developed that the witness knew that the Communist Party was such an organization. Of course it is reputed to be of general knowledge that the Communist Party does or did advocate the overthrow of the government of the United States by force or violence, but a careful examination of this witness' testimony failed to disclose that he had such knowledge and in the absence of such proof he cannot be considered as having committed perjury. The offense of perjury requires a false statement to be willfully made knowing it to be false. It has not been shown that the witness knew that the nature and purpose of the Communist Party of the United States was to overthrow the government of the United States by force or violence at the time he signed the loyalty oath.

If the witness had been convicted of perjury that would be a different matter but he was not. Neither has it been shown that he made any prior inconsistent statements.

The respondent denied ever having been a member of the Communist Party of the United States or of the John Reed Club or having attended any meetings of the John Reed Club in the summer of 1947 and that the witness' testimony was false in that respect. She did admit that she had attended a study club on the University of Southern California campus from the fall of 1946 to about March of 1947, but that this organization was in no way Communistic and which she had never heard referred to as the John Reed Club during that time. She also denied ever having handed the witness Kerr a Communist Party membership card.

The respondent presented a character witness, Mr. Lee Edward Travis, a professor of psychology and speech at the University of Southern California, who identified the respondent as a student at that university and that he had been acquainted with her since the early part of 1946. He testified that she was a person of good moral character and that he had never known her to belong to or be associated with any subversive organization or to have expressed any opinion or declarations inimical to the United States. He claimed that he had never heard of the John Reed Club of the Communist Party on the campus of the University of Southern California, but admitted that his acquaintance with the respondent had been in a student-instructor relationship only.

Another witness Milton Edward Dickens was presented by the respondent and he testified that he was the head of the Department of Speech at the University of Southern California. He identified the respondent and testified that he first met her in 1946 and since that time has seen her frequently as a student and later as a member

of the teaching staff at the university. He testified that her moral character was excellent and that he did not believe she was ever a member or associated with any subversive group or organization and that he had never heard her express any opinion inimical to the United States or our form of government. He claimed to have no knowledge of the John Reed Club as such.

Mr. Jack Henry Lane, Jr., a witness for the respondent testified that he was a manufacturer of women's sportswear and that he had been acquainted with the respondent for about six years, having first met her when he took his daughter who was hard of hearing, to the respondent for speech lessons. He testified that during that time he has seen her frequently and never heard her express any declaration inimical to the United States or our form of government and stated that he had no knowledge of the respondent ever having belonged to or been associated with anyone who had such interests. He testified that in his opinion respondent was a person of good moral character.

Marion A. Mentzer, a witness for the respondent, testified she was a retired teacher and that the respondent had lived at her home from April 2, 1946 to June 1, 1948; that there had been no meetings of any organization at her home; that she had never heard the respondent express any declaration opposed to the government of the United States; that she had never known or heard of the respondent's association with any person who was a member of any subversive group and that she had no knowledge of the John Reed Club.

There were presented by the respondent and introduced in evidence as exhibits 10 to 20 a number of character

reference letters and testimonials in which the writers express their opinion that the respondent had never been known to them to be a member of any subversive organization.

In view of the respondent's admissions as reflected in the transcript of her testimony of November 2, 1950, made a part of this record as exhibit 7, which is corroborated and supported by the testimony of the government witnesses Adrean and Kerr, it is concluded that she was a member for a period of time during the years 1946 and 1947 of a section or unit of the Communist Party of the United States organization on the campus of the University of Southern California and known as the John Reed Club.

The respondent specified Canada as the country to which she desired to be deported if found subject to deportation and ordered deported from the United States.

Findings of Fact.

Upon the basis of all the evidence presented, it is found:

(1) That the respondent is an alien, a native and citizen of Canada;

(2) That the respondent last entered the United States at San Ysidro, California, in July 1949, at which time she was admitted as a returning United States resident upon the presentation of a resident alien's border crossing identification card;

(3) That the respondent was a voluntary member of a unit or section of the Communist Party of the United States known as the John Reed Club, for a period of time during the years 1946 and 1947.

Conclusion of Law.

Upon the basis of the foregoing findings of fact, it is concluded:

(1) That under the Act of October 16, 1918, as amended, and Section 19 of the Immigration Act of 1917, as amended, the respondent is subject to deportation in that she is an alien who has been prior to entry a member of one of the classes of aliens enumerated in Section 1(2) of the Act of October 16, 1918, as amended: An alien who was a member of the Communist Party of the United States.

Recommended Order.

It is recommended that the alien be deported from the United States pursuant to law on the charge stated in the warrant of arrest.

Bert F. Kearney,

Bert F. Kearney,

Hearing Officer.

Los Angeles, California.
March 13, 1952.

Mar. 19, 1953

File: A-7759254—Los Angeles.

In re: Halldora Kristin Sigurdson.

In Deportation Proceedings.

In Behalf of Respondent: John P. Tobin, Esq., 1120 Guaranty Building, Hollywood 28, California. (Brief submitted.)

Charges: Warrant: Act of 1918—Prior to entry, member of Communist Party of United States.

Lodged: None.

Application: Termination of proceedings.

Detention Status: Released under bond.

The case comes forward upon certification under the provisions of former 8 C. F. R. 90.3(b) pursuant to the order of the Acting Assistant Commissioner dated May 26, 1952.

The record relates to a native and citizen of Canada, 40-year-old female, who last entered the United States at the port of San Ysidro, California in July 1949 and was admitted upon presentation of a resident alien border crossing identification card. She had previously been lawfully admitted for permanent residence at the port of Blaine, Washington on December 29, 1946. Prior thereto she had entered the United States as a visitor from March 26, 1944 until December 1945 and has continued to reside in the United States since her admission for permanent residence except for a temporary visit to Canada.

The finding of deportability based upon membership in the Communist Party of the United States is predicated primarily on the transcript of a recorded sworn state-

ment made by the respondent at Los Angeles, California on November 20, 1950. (Ex. 7.) During the course of this sworn statement, made by the respondent in the presence of two Immigration officers, respondent, after first denying any knowledge of a group at the University of Southern California known as the John Reed Club and after first denying membership in the Communist Party, later stated that she had been a voluntary member of the Communist Party of the United States for approximately one year in 1946 and 1947 and had paid dues. It is this sworn statement which is the subject of attack by respondent's counsel who contends that it was obtained by means of coercion and duress applied by the Immigrant officers upon the respondent and that it was inadmissible because it did not obtain the full record of the interview which was interrupted by many off-the-record discussions and explanations.

We have carefully examined the statement together with the extended hearings during which counsel made every effort to discredit not only the record of the sworn statement but also challenged the reliability, truthfulness, and competency of the two witnesses introduced and used by the Government to further establish its case by testimony indicating that the respondent was in fact a member of the John Reed Club at the University of Southern California, this club being the local cell or unit of the Communist Party of the United States. The respondent at the hearing denied that she had ever been a knowing member of the John Reed Club or that she had heard of

it by that name, and denied being a member of the Communist Party of the United States despite her admissions in the recorded statement. The sworn statement, Exhibit 7, is substantially an accurate transcript of her testimony, but the respondent's contention also is that the words were forced from her although her explanations regarding her actual admission of membership in the Communist Party of the United States are far from satisfactory.

Under regulations then in effect, 8 C. F. R. 151.3(b), the Hearing Officer is impowered to enter of record any written or recorded statement or satisfactory evidence of any admission made by the alien or any other person during an investigation. The statement was therefore properly entered into evidence. A study of the entire hearing satisfies us that this statement as to membership in the Communist Party of the United States was not made under duress or coercion and that it was properly admitted into evidence. The testimony of two Government witnesses, Adrean and Kerr, furnishes corroboratory and cumulative evidence of the respondent's membership in the Communist Party of the United States. Some inconsistencies may be present in their testimony but inasmuch as they are testifying from recollection of events that happened some years previously, such inconsistencies are to be expected and they are not so substantial as to require us to disregard their testimony. We come to the conclusion that the Government has established that the respondent is deportable as charged in the warrant of arrest.

Counsel has taken exceptions alleging that the respondent was not given a fair hearing, that the Hearing Officer conducted himself and the hearing improperly in admitting evidence against the respondent and failing to grant several of counsel's motions, and that the Hearing Officer was guilty of gross misconduct amounting to misfeasance and malfeasance in his summarization of the testimony. Our examination of the record fails to convince us that the Hearing Officer conducted himself in the manner claimed by counsel. On the contrary, it would appear that the Hearing Officer extended to counsel the widest possible latitude in his cross-examination and interrogation of the Government witnesses and that the hearing itself was eminently fair. Counsel in his exceptions has made reference to the fact that an indictment for making false statements obtained against respondent was dropped, but we are unaware of the considerations which prompted this action nor can we see how it affects the ultimate question in the instant case, which is whether the respondent was a member of the Communist Party of the United States as proscribed by the Act of October 16, 1918, as amended. We shall accordingly dismiss the appeal.

Order: It is ordered that the appeal be and the same is hereby dismissed.

Chairman

District Director: Please be guided by the order contained in this official copy of the decision rendered in this case and notify interested parties.

United States Department of Justice, Board of Immigration Appeals.

Jun 12, 1953

In The Matter Of Halldora Kristin Sigurdson.

File: A-7759254—Los Angeles.

In Deportation Proceedings.

In Behalf Of Respondent: John P. Tobin, Esquire, 1120 Guaranty Building, Hollywood 28, California.

Deportable: Act of 1917, as amended—Prior to entry, member of Communist Party of the United States.

The case is before us on motion of counsel requesting reconsideration of our order dated March 19, 1953 in which we concluded that deportability had been established on the warrant charge stated above.

The instant motion repeats some grounds of exception previously raised and which were disposed of in our order of March 19, 1953. Counsel raises the question of the originality and integrity of the dictaphone belts employed to record the alleged statement, Exhibit 7, and strongly insinuates that the dictaphone belts which were used to record the questions of the interrogating officers and the statements of the respondent were spurious or that certain incriminating answers were "dubbed in." We are constrained to differ with counsel. The recording was compared with the transcript of the hearing and was found to be in all substantial respects accurate and correct. The charges that the dictaphone belts were spurious or were altered in some way so that they became other than a faithful reproduction of what was testified to at the preliminary examination of the respondent is not sustained

by the record. The use of dictaphone or other modern electronic or mechanical recording devices has received judicial sanction and widespread use. It has been stated that the administration of justice should make use of all advances of science whenever feasible, and that one of these advances may prove to be the official transmission of the questions and answers of counsel, judge and witnesses by microphone installed in court, recording the words on a dictaphone.[1]

As we have already stated, under regulations then in effect, 8 C. F. R. 151.3(b), Exhibit 7 was properly admitted into evidence. The case of Bridges v. Wixon, 326 U. S. 135 is not in point because it was conceded that the statement under attack in that case was admitted into evidence contrary to regulations then existing. We have already considered exceptions again repeated by counsel as to coercion and duress on the part of the respondent in making the alleged statement and the question of the credibility of the Government witnesses in reaching a conclusion as to the probative value of the evidence to establish the charge.

After carefully reconsidering the case, we are convinced that the respondent had not been denied a fair hearing or that she has been in any way denied due process, and we again reaffirm our conclusion that the charge contained in the warrant of arrest has been sustained by the evidence.

The motion to reconsider will be denied. We perceive no reason to certify this decision to the Attorney General as requested by counsel.

Order: It is ordered that the motion to reconsider be and the same is hereby denied.

Chairman

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[1] 3 Wigmore on Evidence (3d ed. 1940) Sec. 809.

Jun 26, 1953

U. S. Department of Justice, Board of Immigration Appeals.

In The Matter Of Halldora Kristin Sigurdson.

File: A-7759254—Los Angeles.

In Deportation Proceedings.

In Behalf Of Respondent: John P. Tobin, Esquire, 1120 Guaranty Building, Hollywood 28, California.

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In a supplemental brief dated May 26, 1953, counsel quotes the following language from the decision in Harisiades v. Shaughnessy, 342 U. S. 580, 593:

> "The reaction of the Communist Party was to drop aliens from membership, at least in form, in order to immunize them from the consequences of their party membership."

---

[1] 3 Wigmore on Evidence (3d ed. 1940) Sec. 809.

Counsel takes this quotation as a basis for his argument that since the respondent in this case had not entered the United States until 1944 and the alleged membership occurred during the period 1946 to 1947, the Supreme Court in the Harisiades case had said that the Communist Party had no aliens in it as members since the adoption of the 1940 Amendment to the October 16, 1918 Act. Counsel argued there was no evidence in the record that there had been a change in the policy of the Communist Party and that the declaration of the Supreme Court made the instant matter moot.

We believe that the argument of counsel based upon a sentence taken out of context is wholly without merit. The court in the Harisiades case, *supra*, was merely describing the reaction of the Communist Party to the decision in Kessler v. Strecker, 307 U. S. 22, in which it was held that Congress, in the statute as it then stood, had not clearly expressed an intent that Communist Party membership remained a cause for deportation after such membership had ceased. The court commented that the reaction of Congress was that the Supreme Court had misunderstood its legislation and enacted the amendment of June 28, 1940 to the Act of October 16, 1918 in order to supply the defect or omission uncovered by the decision in Kessler v. Strecker. We are satisfied that the Supreme Court did not hold as claimed by counsel that there were no aliens in the Communist Party since the adoption of the 1940 Amendment to the Act of October 16, 1918.

After carefully reconsidering the case, we are convinced that the respondent had not been denied a fair hearing or that she has been in any way denied due process, and we again reaffirm our conclusion that the charge contained in the warrant of arrest has been sustained by the evidence.

The motion to reconsider will be denied. We perceive no reason to certify this decision to the Attorney General as requested by counsel.

Order: It is ordered that the motion to reconsider be and the same is hereby denied.

Chairman

APPENDIX "C."

Statutes Involved.

The Act of October 16, 1918, as amended, Section 1 and 4, 8 U. S. C. 137, provides, in pertinent parts, as follows:

"Section 1. That any alien who is a member of any one of the following classes shall be excluded from admission into the United States. * * *

* * * (2) Aliens who, at any time, shall be or shall have been members of any of the following classes: * * *

* * * (c) Aliens who are members of or affiliated with (i) the Communist Party of the United States, * * *

Section 4(a) Any alien who was at the time of entering the United States, or has been at any time thereafter * * * a member of any one of the classes of aliens enumerated in section 1(2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States."

The Immigration Act of February 5, 1917, as amended, Section 19, 8 U. S. C. 155:

"Section 19(a) * * * any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United

States; * * * shall, upon the warrant of the Attorney General, be taken into custody and deported: * * * In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Attorney General shall be final."

28 U. S. C. 2241—"Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. . . .

(b) . . .

(c) The writ of habeas corpus shall not extend to a prisoner unless

1. He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof or

2. . . .

3. . . .

4. . . .

5. It is necessary to bring him into court to testify or for trial."

Act of June 25, 1948, c. 646, same amended May 24, 1949 c. 139, sec. 112, 63 Stat. 105.

28 U. S. C. 2242—"Application

Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known. . . . ."

Act of June 25, 1948, c. 646, 62 Stat. 965.

28 U. S. C. 2243 "Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

. . .

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

. . .

Unless the application for the writ and the return present only issues of law the person who the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

. . .

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require."

Act of June 25, 1948, c. 646, 62 Stat. 965.

28 U. S. C. 2246 "Evidence; depositions; affidavits.

On application for a writ of habeas corpus, evidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit. If affidavits are admitted any party shall have the right to propound written interrogatories to the affiants, or to file answering affidavits."

Act of June 25, 1948, c. 646, 62 Stat. 966.

28 U. S. C. 2248—"Return or answer; conclusiveness

The allegations of a return to the writ of habeas corpus or of an answer to an order to show cause in a habeas corpus proceeding, if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true."

Act of June 25, 1948, c. 646, 62 Stat. 966.

28 U. S. C. 2253—"Appeal

In a habeas corpus proceeding before a circuit or a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had. ". . . ."

Act of June 25, 1948, c. 646, 62 Stat. 967, amended May 24, 1949, c. 139, Sec. 113, 63 Stat. 105.

California Government Code, Title 1, Div. 4, Ch. 8.

"Sec. 3103.—The oath or affirmation required by this chapter is as follows:

"I. ....., do solemnly swear (or affirm) this I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United

States and the Constitution of the State of California; that I take this obligation freely, without any mental reservations or purpose of evasion; and this I will and faithfully discharge the duties upon which I am about to enter.

"And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means except as follows: .....

(If no affiliations, write in the words 'No Exceptions') and that during such time as I am a member or employee of the ..... I will not advocate
(name of public agency)
nor become a member of any party or organization, political or otherwise, that advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means."

Following Are The Applicable Rules And Regulations For The Guidance Of The Immigration Service And Protection Of Alien.

Title 8, Code of Federal Regulations.

Sec. 150.1(a) "The case of every alien reported or believed to be subject to arrest and deportation, shall

be thoroughly investigated by such officer as may be designated for that purpose.

(b) The purpose of the investigation shall be to discover whether or not a *prima facie* case for deportation exists; that is, whether there is credible evidence reasonably establishing (1) that the person investigated is an alien and (2) that he is subject to deportation.

(c) All statements secured from alien or from other persons as witnesses during an investigation, which are to be used as evidence, should be taken down in writing in question and answer from; and the investigating officer shall ask the person interrogated to sign the statement. Whenever such recorded statement is to be obtained from any person, the investigating officer shall (1) identify himself to such person, (2) warn the person that any statement made by him may be used as evidence against him in any subsequent proceeding, and (3) conduct the interrogation under oath or affirmation. . . .)"

Sec. 150.2(a) "Whenever it is found, after preliminary investigation, that a *prima facie* case for the deportation of an alien exists, application for a warrant of arrest shall be made. The application shall be in writing, shall set forth the ground upon which it is made and shall be accompanied by the supporting evidence and, if available, by the alien's registration number under the Alien Registration Act, 1940."

Sec. 151.2(a) "The officer assigned to conduct the hearing under a warrant of arrest shall be referred to as the 'hearing officer.' He shall have authority to (1) . . . (2) . . . (3) conduct the hearing and rule upon all objections to the introduction of evidence or motions made during the course of the hearing, (4) . . .

and (7) take any other action consistent with applicable provisions of law and regulation."

(b) "The hearing officer shall conduct a fair and impartial hearing. . . . He shall exclude from the record any evidence that is irrelevant, immaterial or unduly repetitious. . . . If the testimony at a hearing is transcribed, the hearing officer shall certify that to the best of his knowledge and belief the transcript is a true report of everything that was stated during the course of the hearing . . . except statements made off the record."

(f) "An officer other than a hearing officer shall be assigned . . . as the 'examining officer' . . . in any case under (1) the act of October 16, 1918, as amended . . . The examining officer shall . . . present all available evidence bearing upon the alien's liability to deportation, . . . The hearing officer in such cases shall exercise all his regular functions . . ., and he may, in addition, take such part in the interrogation . . . as he may deem necessary to assure that a full and proper hearing is held."

(g) "The alien shall be permitted to obtain counsel or other representative under Part 95 of this chapter, If such counsel or representative be selected, he shall be permitted to be present the entire hearing, to offer evidence to meet any evidence adduced against the alien and to cross-examine witnesses. The alien's attorney or representative shall be permitted to state his objections succinctly, and they shall be entered on the record. . . ."

151.3(a) "Record. The testimony and exhibits together with all written motions and other papers and requests filed in the proceedings, shall constitute the record in the case."

(b) "Use of statements made during course of investigation. The hearing officer may enter of record any written or recorded statement or satisfactory evidence of any admission made by the alien or any other person during the investigation. If objection thereto is made by the alien or his counsel or representative, the reasons for the objection, as well as the ruling thereon by the hearing officer, shall be made a part of the record."

Sec. 151.5(a) "Preparation by hearing officer of written decision . . ., the hearing officer shall, as soon as practicable after the conclusion of the hearing, prepare in writing a decision, signed by him, which shall set forth a summary of the evidence adduced. . . . ."

(c) "The alien or his counsel . . . may—submit—exceptions to hearing officer's decision—which may be accompanied by supporting argument or brief. . . ."

Sec. 151.7 "Submission of record to the Commissioner. In cases in which the decision of the hearing officer requires the approval of the Commissioner . . . the entire record of hearing, upon completion, shall be promptly forwarded to the Commissioner by the officer in charge of the district or suboffice (a) upon receipt of exceptions as provided in sec. 151.5, or (b). . . ."

(The Foregoing References Are To Rules Set Forth In Code Of Federal Regulations In Effect During The Time In Which Hearing Was Held, Namely, October, 1951, to and including, February, 1952.)

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STATUTE

Internal Security Act of 1950, 64 Stat. 987, 1006, 1008, Section 22	2

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 462

HALLDORA KRISTIN SIGURDSON, PETITIONER

v.

H. R. LANDON, ALBERT DEL GUERCIO AND HENRY GRATTAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. I, 116-126)[1] is reported at 215 F. 2d 791.

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[1] "R. I" refers to the first of three blue volumes designated as the transcript of the record; "R. II" to Volume II containing transcript of hearing on June 30, 1953; and "R. III" to Volume III containing transcript of hearing on July 13, 14 and 15, 1953. "Tr." will refer to the transcript of the deportation proceedings before the hearing examiner, which was a part of the certified Immigration and Naturalization file, attached as Exhibit B to the respondent's return to the habeas corpus petition (R. I, 22).

JURISDICTION

The judgment of the Court of Appeals was entered on September 7, 1954 (R. I, 127). The petition for a writ of certiorari was filed November 26, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether in deportation proceedings petitioner was denied a fair hearing on the alleged grounds that her statement admitting prior Communist Party membership had been obtained by coercion and that the dictaphone records from which her statement was transcribed were spurious.

2. Whether the District Court arbitrarily dismissed the habeas corpus petition without carefully studying the record in the deportation proceedings.

STATUTES AND REGULATIONS INVOLVED

Section 22 of the Internal Security Act of 1950, 64 Stat. 987, 1006, 1008 provides:

> Section 1. That any alien who is a member of any one of the following classes shall be excluded from admission into the United States:
>
> * * *
>
> (2) Aliens who, at any time, shall be or shall have been members of any of the following classes:
>
> * * *

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist Political Association, (iv) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt;

* * *

Section 4. (a) Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated in * * * section 1(2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

* * *

STATEMENT

Petitioner, a Canadian citizen, first entered the United States in 1944 (Tr. 6, II). Since taking a short trip to Mexico in the summer of 1949 she has not departed from the United States (Tr. 13, 14).

On November 2, 1950, petitioner appeared before immigration investigators Habell and Chandler in Los Angeles, California, and by means of a dictaphone gave a question and answer statement which was transcribed in 39 pages (Ex. 7 of deportation proceedings). Petitioner was warned that "any statement that you make should be voluntary", and that it could be used by the government in proceedings against her (Ex. 7, p. 1). Petitioner stated that in 1947 she was associated with a study club at the University of Southern California, one of whose members was Tony Adrean, but that she did not identify the name of the John Reed Club with the study club (Ex. 7, p. 17). Later she announced willingness to state that this study club could have been the John Reed Club, that its members were probably a part of the Communist Party of the United States, and that she was "most suspicious" of this fact (Ex. 7, pp. 25, 21, 32-33). The following was a part of petitioner's statement (Ex. 7, pp. 33-34):

> Q. I now repeat my question. Are you now or have you ever been a member of the Communist Party of the United States?
>
> A. Yes.

Q. Would you please state the periods of your membership?

A. I don't recall the exact date that I was identified with this study group. * * * I think the time was sometime in '46 and carried over into '47.

Q. Would you state then that you were a member of the Communist Party of the United States for a period of approximately one year?

A. Yes, approximately one year or less.

Q. Do you feel that your membership was exclusively during the period that you was (sic) associated with this study group which we have referred to as the John Reed Club?

A. Yes, I do.

On October 10, 1951, a deportation warrant was issued charging that prior to petitioner's reentry from Mexico, she had been a member of or affiliated with the Communist Party of the United States, rendering her subject to deportation under Section 22 of the Internal Security Act of 1950 (*supra*, pp. 2-3).

At the deportation hearing, the hearing officer admitted in evidence Exhibit 7, the transcript of petitioner's statement of November 2, 1950, over objection by petitioner's counsel that the statement was not voluntary, did not contain all of the discussion at the time it was taken, and was inaccurate (Tr. 162).[2]

[2] Petitioner and her counsel had several meetings with investigators Habell and Chandler in November of 1950, and a

Before admitting petitioner's statement, testimony was heard regarding the circumstances surrounding its being made. Petitioner's testimony was to the effect that the questioning occurred on a warm afternoon, the temperature varying between 84 and 91 degrees; that only one window was open in the room and it was closed when the questioning began; and that Habell and Chandler smoked incessantly (Tr. 131-133). Petitioner said that the dictaphone was shut off many times while the investigators accosted her with such remarks as, "Oh, you know better," "we know that you know", "you are an intelligent girl, you say you are a schoolteacher", and "don't try to tell us that" (Tr. 134). She stated that her answer that she had been a member of the Communist Party was not voluntary. She explained that she was frightened; that she was told what the answers ought to be; that the investigators' voices were belligerent; and that she wondered at what point they might use physical violence. (R. 137-138, 142.) She admitted, however, that the investigators did not threaten her with bodily harm, and did not threaten to incarcerate or deport her unless she made certain answers (Tr. 141, 142).

Habell and Chandler testified that although they smoked, it was not incessantly and was with petitioner's permission (Tr. 40, 103). Habell stated that the windows were closed part of the time due to the noise (Tr. 40-41), and Chandler remarked

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few minor corrections were made in the transcript, but petitioner refused to sign it on the alleged ground that it was still inaccurate (Tr. 57, 60-61, 94, 100, 140-141).

that one window remained open about half way (Tr. 102-103). The dictaphone was shut off about 10 or 15 times during the interview, sometimes at petitioner's request, for various reasons such as outside noises, the fact that petitioner did not understand the questions, or that she required time to recall facts (Tr. 63, 71, 105, 108, 109). The statement as recorded did not contain the entire discussion, but only such facts as were pertinent to the inquiry (Tr. 43, 44).

The interview lasted from 1:00 to 4:45 p.m. (Tr. 40, 41). At about 4:15 p.m. Chandler took over the questioning and asked petitioner whether, if she knew that the government was aware of her Communist Party membership and was prepared to present witnesses to establish this, she would still deny membership. Shortly after this she admitted membership (Tr. 126, 127). Habell heard petitioner's admission of Communist Party membership (Tr. 66).

At the hearing, after petitioner complained of errors in the transcript of her statement, the dictaphone record belts were read back before the hearing officer (Tr. 144-146), who then stated to petitioner's counsel (Tr. 146-147):

> Q. Well now, both—both you and Mr. Nolan [Examining Officer] compared this transcript. Was it correct with the recordings?
>
> A. Substantially so. Substantially so with the recordings. There were certain minor corrections, but we won't worry about that.

[Petitioner's] COUNSEL TO EXAMINING OFFICER:

Q. Isn't that right Mr. Nolan?

A. That's right. There was nothing that would alter the meaning of the record at all.

Witness Kerr testified that from April to October 1947 he was a member of the Communist Party of the United States in the unit known as the John Reed Club at the University of Southern California (Tr. 169); that at a meeting of this club, which was open only to Party members, petitioner gave him an envelope containing his Communist Party membership card (Tr. 172-173, 175). Kerr admitted that as a teacher he signed a California loyalty oath in 1950 (Tr. 168, 177-178, 203-206), reciting that within the five preceding years he had "not been a member of any organization, political or otherwise, that advocated the overthrow of the government of the United States or of the State of California by force or violence or other unlawful means" (Ex. 9).[3]

Witness Tony Adrean testified that he had been a member of the Communist Party in 1941 and from 1945 to 1947 (Tr. 242); that he was one of the organizers of the John Reed Club of the Communist Party of the United States at the university (Tr. 243, 249, 277); that petitioner was a member of the Communist Party and of that club (Tr. 246);

[3] Recalled as a witness, petitioner denied that she saw Kerr at the 1947 meeting, or that she handed him a membership card (Tr. 225, 226); and denied that she had ever been a member of the Communist Party of the United States or of the John Reed Club (Tr. 227, 228).

and that he saw her attend many of the club's meetings, one of which occurred in June 1947 at her home (Tr. 244-245, 272-273). In rebuttal petitioner denied that she was ever a member of the John Reed Club or that Adrean had attended a club meeting at her home, which she asserted had a different address from that testified to by Adrean (Tr. 283-284).

The hearing officer decided that petitioner was a voluntary member of a unit or section of the Communist Party of the United States known as the John Reed Club, for a period of time during the years 1946 and 1947 and recommended that she be deported (Pet. App. 17-28). This ruling was affirmed by the Board of Immigration Appeals in three opinions (Pet. App. 29-38). A warrant for petitioner's deportation was issued on March 30, 1953 (R. I, 23-24).

Petitioner then filed in the United States District Court for the Southern District of California a petition for a writ of habeas corpus, (R. I, 2-22), the substance of which was that she was not deportable since her statement of November 2, 1950, had been obtained under duress and coercion, was incomplete and inaccurate, and had been transcribed from spurious dictaphone belts. It was further alleged that the witness Kerr was a perjurer since he falsified his California loyalty oath. After issuance of an order to show cause (R.I, 16-18) respondents filed their return (R. I, 19-22), attaching thereto the complete certified file of the

Immigration and Naturalization Service as Exhibit B, and petitioner filed a traverse to the return (R.I, 35-38).

After several hearings on the habeas corpus petition (R. II, and R. III), the District Court made findings of fact and conclusions of law (R. I, 88-90) and entered judgment denying the petition for a writ of habeas corpus (R. I, 92-93). On appeal (R. I, 94) the judgment was unanimously affirmed (R. I, 127).

ARGUMENT

1. Petitioner contends (Pet. 15-17) that the deportation proceedings were basically unfair in that the finding of membership in the Communist Party rests upon her statement of November 2, 1950, which was coerced and taken from spurious dictaphone belts.

The facts on which petitioner relies to establish coercion were in dispute. While she claimed to have been frightened when she made her admission of Party membership, the Hearing Officer noted that, on the play back, "her voice seemed to be clear and calm in all her answers as recorded." (Pet. App. 20.) Taking into consideration petitioner's testimony, that of the officers, and the playback of the dictaphone belts, the hearing officer was fully justified in finding petitioner's statement to have been voluntary.

The charge of spurious dictaphone belts is itself spurious. The argument is that since the dictaphone was admittedly stopped on numerous occa-

sions, audible clicks should have been heard in the playback (Pet. 15-16). There was however no proof of this and no proper offer of such proof. (See Tr. 235-236.) At the habeas corpus hearing petitioner's counsel even stated: "The dictaphone representatives * * * would have testified the machine in vogue, and which they sold to the Immigration Service in 1950 was such and such a type that didn't have that type of contrivance on it which would have a click" (R. III, 68). As to the argument that while eight belts were produced, the transcript was made from only five (Pet. 11, 15), petitioner made no showing that the three belts which were not played were material on the question as to whether she had made admissions of Communist Party membership. At the habeas corpus hearing the attorney for respondents pointed out that the three unplayed belts related to immaterial matters (R. II, 35).

The allegations as to spuriousness are an attempt to becloud the issue. Petitioner expressly admitted giving the crucial answer that she had been a member of the Communist Party (Tr. 137), and the investigators testified, independently of the records, that they had heard petitioner's admission (Tr. 66, 126).

Moreover, the finding of membership does not rest on the statement alone. The testimony of the witnesses Kerr and Adrean, former members of the John Reed Club, not only corroborated petitioner's statement that she had been a member of

the Communist Party but was independent proof of such fact. Although it may be conceded *arguendo* that Kerr's credibility was not of the highest by reason of his having falsely signed the California loyalty oath, his testimony was still competent. So was that of Adrean, who was significantly named in petitioner's statement as a member of the study club which was later identified as the John Reed Club (Ex. 7, p. 17). As the court below correctly observed (R. I, 122): "The hearing officer saw and observed the two witnesses. It was for him, not for us or for the trial judge, to say whether their testimony, then given in his presence, should be credited." Thus the crucial fact of membership was thoroughly proved.

2. There is no substance to petitioner's complaint that the District Court acted arbitrarily in dismissing the habeas corpus petition without having read the record (Pet. 19-20).

The minutes of the District Court for July 13, 1953, show an order dismissing the habeas corpus petition (R. I, 49, 50). On July 14, at a hearing on petitioner's motion for rehearing the judge admitted that he had not had time to read the deportation transcript, but stated, "I will read the whole record tomorrow. I will read the whole thing. I will read everything. I will rule on this about Friday" (R. III, 63, 65; R. I, 75). On July 15 the motion for rehearing was denied (R. I, 82). On July 28, 1953, the District Court entered formal judgment denying the petition for habeas corpus

after referring to the hearings on July 13, 14, and 15. This judgment recited that the court had been "fully advised in the premises" after "having been submitted the complete administrative files of the Immigration and Naturalization Service containing the transcript of the administrative hearing of the petitioner and the exhibits introduced therein." (R. I, 92-93.)

It is clear, therefore, that prior to entry of the final order denying the petition for habeas corpus the District Court had carefully considered the administrative deportation record and did not act arbitrarily.

CONCLUSION

No conflict of decisions is involved and the petition for a writ of certiorari presents no question calling for further review by this Court. It is therefore respectfully submitted that the petition should be denied.

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IN THE

Supreme Court of the United States

October Term, 1954
No. 462.

HALLDORA KRISTIN SIGURDSON,

Petitioner,

vs.

H. R. LANDON, ALBERT DEL GUERCIO and HENRY GRATTAN,

Respondents.

Petition for Rehearing of Order Denying Petition for Writ of Certiorari.

Halldora Kristin Sigurdson prays that this Court grant rehearing of its order of January 10, 1955, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit in the above entitled case as prayed for in the petition filed November 26, 1954, herein.

Reasons for Granting Rehearing and Issuing Writ of Certiorari.

Eagles v. Samuels, 329 U. S. 304, 311, has pronounced the doctrine that this petitioner must show that the procedural irregularities at her deportation hearing deprived her of basic and fundamental safeguards amounting to a lack of due process.

If this be true, and we believe it to be a fair statement of the Eagles ruling, it resolves itself into a question of whether the evidence collides with established principles of fair play and decency. While this Court ordinarily does not have the time to concern itself with mere disputes as to evidence, the guideposts laid down in *Holland v. United States*, No. 37, O. T., 1954, and decided December 6, 1954, sets forth guiding lights which were knocked out by the Hearing Officer in this petitioner's deportation hearing.

True, Holland is a criminal matter, but, we urge with the powerful cry of conscience, what penalty can be more severe than deportation? The traditional safeguards of liberty were swept aside at the hearing and not considered by the arbitrary ruling of the trial court, *infra*.

The record before this Court is incapable of being honestly disputed in that:

1. The Examining Officer handed to the Hearing Officer eight (8) Dictaphone belts as the belts of the preliminary examination, yet only five (5) were made part of record by Hearing Officer after that number was all required to make up alleged statement, Exhibit 7 [Tr. 107, 145-146];

2. The investigating officers testified that there should be a "click" on the playback of the belts to indicate each time the Dictaphone was stopped [Tr. 69, 120] and on two (2) different occasions, the Hearing Officer took "judicial knowledge" of this fact [Tr. 69, 120]; how can respondents charge that there was no proof (Resp. Br. 11) when it is a matter of record and a human life is involved?

3. That the trial court failed to read the record submitted and after once admitting it had not read the record (Pet. 13), subsequently admitted on July 15, 1953, as follows:

"The Court: Just let the record show I read all that was necessary." [Rep. Tr. July 15, 1953, at p. 93.]

If the trial court had read the record, it would have seen that the respondents were attempting to mislead it as respondents brief at page 11 attempts to do with this Court regarding the materiality of the missing three (3) belts for the reference in respondents brief refers to at least one belt made subsequent to hearing and two belts foreign to petitioner's examination, and the record is positive that eight belts were employed to make statement [Tr. 107].

As was pointed out in *Holland, supra,* here were two leads which were reasonably susceptible of being checked by both the Hearing Officer and the trial court on the habeas corpus petition. If checked, they, or one of them, might have completely exonerated your petitioner. It was the duty of the Hearing Officer under 8 C. F. R. 151.2(a)(7); 151.3(a) (Pet. App. 44) to check these fundamental safeguards and if the trial court had not acted arbitrarily, it would have observed them. The portions of the record which the trial court had not read might have been the very parts which would have cleared petitioner of any stigma.

These questions are substantial and fundamental and refer to employment of mechanical devices which can easily be tampered with to produce a conviction when the

safeguards are let down. Serious injustice has been done this petitioner, far greater than any penal sentence.

It is of great significance that the respondents' brief makes no attempt to defend the arbitrary conduct of the Hearing Officer *re* the witness Kerr (Pet. 12, 16(8); Pet. App. 24).

> "The history of liberty has largely been the history of observance of procedural safeguards." (*McNabb v. United States*, 318 U. S. 332, 347.)

The *Holland* case has threaded the needle and sewed the hole created by Eagles and this Court's acceptance of this petition will point out the limitations and restrictions of spurious mechanical evidence and the responsibility and duty of a trial court in reviewing proof of same.

Conclusion.

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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Counsel for Petitioner.

JOHN P. TOBIN,
Of Counsel.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and is not for delay and is restricted to grounds specified in rules of this Court. January 31, 1955.

HARRY WOLPIN,
Counsel for Petitioner.

JOHN P. TOBIN,
Of Counsel.